



January 9, 2008

VIA HAND DELIVERY

Ms. Martha Seaman
Environmental Rules Specialist
Waste Programs Division
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, Arizona 85007

Re: *Comments on Draft Solid Waste Rules*

Dear Martha:

On behalf of the Solid and Hazardous Waste Subcommittee of the Arizona Chamber of Commerce and Industry ("Chamber"), we provide the following comments on the Arizona Department of Environmental Quality's ("ADEQ's") draft solid waste rule package released September 10, 2007. The comments provided below are divided into general comments, applicable to several provisions or the overall regulatory scheme described in the draft rules, and specific comments, organized in a section-by-section manner.

I. General Comments

The Solid Waste Statute provides that ADEQ must consider the nature of the waste streams when adopting solid waste rules. A.R.S. § 49-761.A. The draft rules fail to meet this statutory mandate. For example, the draft rules contain a long list of "best management practices" (e.g., Article 4) that are applicable to all solid wastes and solid waste facilities, from the largest municipal solid waste landfill to the smallest drop box, regardless of the size and type of facility or waste. Many of these best management practices are extremely burdensome when applied to small facilities or certain types of wastes. Applying them equally to all solid waste facilities, regardless of size or type, is unwarranted. Several Chamber members who have manufacturing facilities where they recycle some of their solid waste to reduce the amount of waste being sent to landfills have determined that the draft rules would deter them from continuing to engage in such recycling. ADEQ should carefully examine the best management practices identified in the draft rules and consider modifying the rules to regulate plan-approved, self-certification, and best management practices facilities in a more "tiered" fashion, rather than impose significant requirements on all solid waste facilities.

The Solid Waste Statute also provides that ADEQ must consider other applicable federal and state laws and rules in effect and avoid adopting solid waste rules that duplicate or are inconsistent with such laws and rules. A.R.S. § 49-761.A. The draft rules often duplicate state and federal laws, and in many instances are inconsistent with such laws. For example, the draft rules contain stormwater run-on and run-off requirements that duplicate the AZPDES Stormwater Permit Program. The draft rules containing location and land use provisions that are inconsistent with or duplicate local zoning laws. The draft rules contain air requirements that duplicate state and county air laws. ADEQ should remove all duplication from the draft rules unless the duplication is authorized by statute.

The Solid Waste Statute contains several exemptions from the definition of “solid waste facility” as well as from the definition of “solid waste.” These exemptions, however, are not identified or discussed anywhere in the draft rules. Although the statutory definitions control, the draft rules appear to abrogate application of these exemptions in certain situations. ADEQ should clarify those situations where the statutory exemptions apply to provide clarity to the regulated community whether certain activities are regulated under the draft rules.

The Aquifer Protection Permit (“APP”) Statute provides that solid waste facilities are exempt from APP Program when solid waste rules addressing aquifer protection are adopted. A.R.S. § 49-250.A.17. ADEQ should clarify in the draft rules how solid waste facilities that have APPs will be transitioned into the solid waste program. The Chamber believes that such facilities should be allowed to continue to operate under their APPs until the facility is required to get approval from ADEQ for a substantial change.

The Arizona Hazardous Waste Statute provides that ADEQ cannot adopt non-procedural rules that regulate hazardous waste, including conditionally exempt small quantity generator waste, more stringent than the federal hazardous waste regulations. A.R.S. § 49-922.A. In many instances, ADEQ has proposed requirements in the draft rules on conditionally exempt small quantity generator waste that are more stringent than the federal hazardous waste regulations.

Articles 6-10 of the draft rules contain requirements for specific types of solid waste facilities. Each of these articles contains a provision listing the types of facilities excluded from the article. It is unclear how a facility that conducts two different types of activities is regulated under Articles 6-10. For example, an intermediate solid waste handling facility may also conduct recycling or treatment. Is the facility regulated under both articles, one article or excluded from both articles? ADEQ should clarify what articles apply to facilities that conduct multiple solid waste management activities.

Finally, several provisions in the draft rules refer to “training of facility personnel.” However, the draft rules do specifically identify the type of training that is required. ADEQ should either eliminate the training requirements from the draft rules or describe precisely what type of training is personnel should receive for each type of solid waste facility.

II. Section-by-Section Comments

ARTICLE 1

R18-13-101. Solid Waste Definitions

The definition of “alert level” should be limited to conditions related to aquifer water quality, not other conditions in an approved solid waste facility plan.

The definition of “contaminated soil” should be amended to exclude soils that meet background concentrations for the contaminants of concern.

The definition of “direct costs” includes items that typically are “indirect costs.” ADEQ should eliminate those items that are typically “indirect costs”, such as “programmatic cost” and “administrative cost.”

The definition of “incompatible waste” creates two new conditions for conditionally exempt small quantity generator waste. The conditions are more stringent than the federal hazardous waste regulations. Additionally, the conditions are vague, and it is uncertain how a generator would determine that a waste meets either condition.

The definition of “land disposal” should be amended to change “placement” with “disposal.” Otherwise, the placement of any “solid waste” of the land, even if it is temporary and not intended for disposal, would meet the definition of “land disposal.”

The addition of “conditionally exempt small quantity generator waste” should be removed from the definition of “municipal solid waste landfill.”

The definition of “non-municipal solid waste landfill” is defined to include landfills that accept regulated waste other than household waste. This definition should be deleted. Instead, ADEQ should create categories of landfills depending on the type of waste received at the facility. For example, a construction and demolition debris landfill should be regulated differently than an industrial solid waste landfill. As stated above, ADEQ needs to develop rules tailored to the type of waste managed at the facility.

The definition of “on-site solid waste handling facility” is very broad and could cover households and most all businesses prior to transporting the waste to an off-site facility. ADEQ should narrow this definition to include only facilities that could potentially have a significant impact on human health or the environment.

The definition of “release” in the draft rules is similar to the WQARF definition. This definition, however, is extremely broad and should be narrowed for purposes of solid waste regulation to exclude any state or federal permitted releases and releases contained within secondary containment.

ARTICLE 3

ADEQ's rulemaking authority for Article 3 is specifically provided for in A.R.S. § 49-761.I. As stated in the Solid Waste Statute, rules adopted under this authority do not apply to sites that are regulated as "solid waste facilities" or sites that are exempted under the definition of "solid waste" or "solid waste facility." ADEQ should clarify the scope of Article 3 to be consistent with A.R.S. § 49-761.I. Article 3 should not apply to solid waste facilities or sites that are exempted under the definitions of "solid waste facility" or "solid waste."

R18-13-301. Responsibility of a Person Who Generates Solid Waste.

Subsection A makes the person who generates solid waste responsible for the "sanitary handling" of the waste, and also states that the generator must use "reasonable care." These terms are very vague and need to be defined by ADEQ. Subsection A requires the generator to be responsible for the lawful "disposal" of solid waste. ADEQ should expand this provision to allow generators to have their wastes recycled, processed or treated in lieu of disposal.

Subsection B states that a generator shall not "litter or dump" solid waste. Again, these terms are not defined and are vague. Further, this Subsection prohibits a generator from using innovative methods for managing wastes that are protective of human health and the environment but are not provided for in the draft solid waste rules.

Subsection C contains ambiguous terms that are not defined in the draft rules. This Subsection charges a generator with "rendering harmless solid waste that is or contains dangerous materials or substances prior to collection and disposal." The terms "rendering harmless" and "dangerous materials or substances" are ambiguous and need clarification by ADEQ. Furthermore, depending on the meaning of these terms, the draft rule imposes treatment requirements on generators for solid wastes that are currently acceptable for disposal in solid waste landfills. Requiring generators to render their wastes harmless is inappropriate and would subject the generator to regulation as a solid waste treatment facility. The Chamber believes that it is inappropriate to require generators to treat waste.

R18-13-303. Responsibility of the Owner or Operator of any Premises.

Subsection A applies to "a person who is an owner, operator, or occupant of any premises, business establishment, or industry..." The term "occupant" is not defined and is not used in the Solid Waste Statute. ADEQ should either eliminate this term or define it and explain how it is different than "operator."

ADEQ's reference to an "owner or operator" in this provision appears to be different from the definition of "owner" and "operator" in R18-13-101, which refer to owners and operators of solid waste facilities. ADEQ should clarify these terms. Additionally, ADEQ should clarify the meaning of the term "industry" as used in this Subsection.

Finally, Subsection A states “[t]he person shall not place, deposit, or store, or *allow to be deposited or stored on the person’s premises, or on any adjoining public street, road or alley, any solid waste...*” (emphasis added). This Subsection places the responsibility for wildcat dumpers on the owners/operators/occupants, even when the activity does not occur on the owner/operator/occupants’ property. This is a very unfair responsibility and should be eliminated.

Subsection B requires owners/operators/occupants to store and dispose all solid waste as provided in the chapter. ADEQ should amend this Subsection to allow other methods of waste management not described in the draft solid waste rules that are equally protective of human health and the environment. Specifically, this Subsection should be expanded to allow for solid waste recycling or treatment.

Subsection C requires solid waste that is not accepted for collection to be “stored, handled, transported and disposed of in a manner approved by the Department.” This provision appears to require an additional ADEQ approval for unaccepted solid waste handling. ADEQ should clarify the meaning of this provision and specify the procedure for approval and the standards that will be required.

Subsection D also contains the ambiguous terms “rendering harmless” and “dangerous materials or substances.” ADEQ should clarify the meaning of these terms.

R18-13-304. Inspection.

This Section requires ADEQ to “make inspections of any premises, container, process, equipment, or vehicle used for the collection, storage, transportation, disposal, or treatment of solid waste as are necessary to ensure compliance with this Chapter.” ADEQ’s statutory authority, however, limits ADEQ inspections to “solid waste facilities.” See A.R.S. § 49-763. Therefore, this inspection provision must be modified to comport with ADEQ’s statutory inspection authority and limited to “solid waste facilities.”

R18-13-305. Collection Required.

ADEQ should clarify that the 75 pound limit in Subsection A only applies to dead animals.

Subsection B.2 is broadly drafted and would allow collection companies to refuse to accept residential solid waste resulting from the repair, excavation, or construction of buildings and structures. This provision should be narrowed, to require collection of these types of solid wastes generated by residential customers. Finally, further clarification is needed explaining Subsection B.3 – solid wastes *resulting from industrial processes* – describing what these solid wastes include.

Subsection C provides that the person providing solid waste collection services shall ensure that solid waste is disposed of at solid waste facilities subject to this Chapter. This

provision restricts the flow of solid waste to out-of-state facilities and violates the Commerce Clause of the U.S. Constitution. *See* U.S. Const., Art. 1, § 8, cl. 3.

R18-13-306. Conditions Governing Storage and Collection of Solid Waste; Notices.

Currently, collection agencies have contractual relationships with customers that dictate the terms and conditions for solid waste collection. This provision is not needed, and could be inconsistent with existing contractual relationships.

Subsection A provides that “[a]ny person providing solid waste collection services may establish requirements or conditions governing the storage and collection of solid waste.” This Subsection should be limited to existing requirements or conditions. ADEQ cannot delegate the authority to establish requirements for storage of solid waste to any person providing solid waste collection services. The collection requirements and conditions that a collection agency establishes for its users should not be dictated by rule, but should be left to the contractual arrangement between the parties. The same comment is relevant to how frequent that collection agency notifies its user’s of collection requirements. This should be left to the collection agency and its users, rather than mandated by rule. The notification required by Subsection B could cost collection agencies millions of dollars each year.

R18-13-307. Storage.

Subsection A requires owner/operator/occupants to “*assure* that all solid waste is contained...” The word “assure” has a specialized meaning in the regulations relating to financial assurance. Therefore, ADEQ should be replaced the term “assure” with “ensure.”

Subsection B requires owner/operator/occupants to only store solid waste in containers that meet certain requirements. The requirements in Subsection B.2 are very prescriptive and should be modified to allow alternate storage. For example, commonly used roll-off containers would not satisfy the requirements in Subsection B.2 since they are not equipped with a tight-fitting covers and may not be “watertight” or “easily cleanable.” Additionally, both Subsections B.2 and B.3 identify detachable containers. This term is neither defined nor is its meaning obvious. ADEQ should clarify the meaning of “detachable containers.” If this term includes roll-off containers, ADEQ should change the rule because such containers are not nonleaking and do not always have a cover (depending on the type of waste stored in the container). Finally, some containers used for collection of solid waste are larger than 32 gallons. ADEQ should allow the use of larger containers.

Subsection C requires owner/operator/occupants to maintain containers “in a manner as to prevent the creation of a nuisance or a menace to public health.” This requirement is vague and ADEQ should clarify what is meant by creation of nuisance or menace to public health. Furthermore, this Subsection requires owner/operator/occupants to replace containers that are broken or that do not meet the requirements of the rule. This provision places a significant burden on owner/operator/occupants to replace non-compliant containers and this provision should provide alternatives other than replacement of the container.

Subsection D requires bulky wastes to be “covered to prevent the accumulation of solid waste or water.” The definition of “bulky items” includes trees, branches and stumps, and the cover requirement for these items is burdensome and unnecessary and therefore should be eliminated or modified. For example, it would be very expensive for residence to cover vegetative waste during periodic collection of such waste by the collection agency. Furthermore, it is unclear how the collection agency is to manage such covers after collecting the waste.

R18-13-308. Frequency of Collection.

Subsection A provides a schedule for solid waste collection services and requires collection twice weekly for garbage and solid waste. Several municipalities have reduced collection of these wastes to once weekly while also collecting recyclables once weekly. ADEQ should modify the draft rules to allow these practices without a variance.

R18-13-310. Transportation of Solid Waste; Vehicle Requirements.

Subsection A requires collection vehicles to be covered, watertight and have a durable body. This requirement is too prescriptive for all solid waste collection vehicles. Collection vehicles are not watertight. Further, the term “easily cleanable” is unclear. Finally, vehicles used to transport rubbish or manure must be constructed to prevent leakage and be covered to prevent blowing of materials. This Subsection should be limited to vehicles used to transport the materials on public roadways.

Subsection B requires transporters to transport the solid waste only to a facility regulated by ADEQ, tribal nation, EPA or another state to and authorized to receive the waste. This provision violates the commerce clause of the United States Constitution. Since ADEQ’s regulations do not have an extra-territorial effect and are only enforceable within the State, the result of this regulation is to require collection service providers to dispose of their solid waste in Arizona. This type of discrimination on interstate commerce violates the Commerce Clause and, therefore, must be eliminated or modified. *See* U.S. Const., Art. 1, § 8, cl. 3.

Subsection B also prohibits a person from transporting solid waste to recycling facilities. Thus, used newspapers could not be transported to a paper mill. Used wood could not be transported to a chipping facility. There are many more examples of solid waste that is currently transported for reuse at a non-solid waste facility. ADEQ should amend Subsection B to allow transporting of solid waste to other types of facilities.

R18-13-311. Handling and Disposal; General.

Subsection A requires all solid waste disposed in the state to be in a solid waste facility regulated by ADEQ or as otherwise authorized in the Section. This Subsection should be modified to explicitly recognize the statutory exempt facilities and permit disposal of solid waste in such exempt facilities. This Subsection should also allow persons to reuse or recycle solid waste.

ARTICLE 4

R18-13-401. Solid Waste Facilities; Applicability of Article.

Article 4 contains provisions that are “best management practices” that appear to apply to all solid waste facilities. However, articles addressing specific types of solid waste facilities, such as treatment or recycling facilities, incorporate certain Article 4 provisions individually rather than by article. For instance, R18-13-801 addressing specific requirements for treatment facilities provides “[i]n addition to complying with the requirements described in 18 A.A.C. 13, Article 4, a solid waste treatment facility shall comply with this Article.” Notwithstanding the general incorporation, the rule R18-13-802 provides “[s]olid waste treatment facilities shall meet the siting criteria described in A.A.C. R18-13-403.” Further, rule R18-13-806 provides that the “owner or operator of a solid waste treatment facility shall develop, maintain and comply with the closure requirements described in A.A.C. R18-13-413.” ADEQ’s incorporation of only specific Article 4 provisions in this fashion may be interpreted to limit the more general Article 4 incorporation. This approach is confusing. The Chamber recommends that only certain aspects of Article 4 should apply to specific types of facilities, depending on the type of waste, size of facility, or activity being performed at the facility.

R18-13-402. Requirement for a Solid Waste Facility Notice.

This Section requires a notice for solid waste facilities pursuant to A.R.S. § 49-762.07. This notice should be consistent with Section 762.07 and should not be required of facilities that already have made a notice under Section 762.07 as required by Subsection B.

Subsection C requires an updated solid waste facility notice when there is a change in owner, operator, name change or change in the location of the facility or its mailing address. This requirement is inconsistent with the statute (A.R.S. § 49-762.07) and therefore should be eliminated.

Subsection E requires the solid waste facility notice to include, among other things, the following information:

- The name, address and telephone number of each owner and operator of the solid waste facility
- Latitude and longitude expressed in degrees, minutes, and seconds, with the method the location was determined and the nearest city or town
- Driving directions from the nearest city or town
- A site map prepared to scale, indicating property and facility size, relative to the surrounding area
- A location map identifying any learning sites within a two-mile radius

- The design capacity of the facility

The Solid Waste Statute does not require the notice to include this information and therefore these requirements should be eliminated.

R18-13-403. Siting Criteria.

This Section requires a solid waste facility be sited on a parcel zoned for that use. Zoning issues should not be included in the solid waste rules since they are already addressed by the appropriate zoning agency. Zoning and solid waste facility approvals are often sought simultaneously. Requiring zoning approval in the solid waste rules as a prerequisite to solid waste facility plan approval will only prolong the approval process for these facilities.

R18-13-404. Operational Plan.

This Section will require all solid waste facilities to prepare an operational plan. The operational plan requirement is a significant burden and this provision should be modified to limits its application to larger, more significant solid waste facilities, rather than designate the “operational plan” as a best management practice, applicable to all solid waste facilities. Further, a separate plan should not be required, but the facility should be allowed to incorporate the requirements of this Section in the solid waste facility plan.

Subsection B sets forth the specific plan requirements. The following is a list of some of those requirements followed by specific comments.

2. A plan to control run-on and run-off as described in A.A.C. R18-13-407.

Facilities that use only tanks and containers should not be required to include run-on and run-off plans in the operational plan. Furthermore, run-off and run-on are storm water related issues and are regulated under AZPDES program, and thus this requirement duplicates other state laws.

3. A waste identification and screening program as described in A.A.C. R18-13-408.

Facilities that only accept their own waste should be excluded from this requirement.

11. A description of the on-site solid waste handling procedures to be used during the active life of the facility

The term “handling procedures” as used in this subparagraph is vague and requires further clarification by ADEQ.

12. A description of the design capacity of the facility.

For many types of facilities, such as storage and recycling facilities, the design capacity will change depending on the amount of waste that the facility receives. This is

accomplished by adding new storage capacity or adding new recycling equipment. A solid waste facility should not be restricted to a design capacity under the rules. This issue is more appropriate for local zoning agencies.

13. A schedule for conducting internal inspections and monitoring of the facility and measures to be taken to abate or address problematic conditions detected through inspections or monitoring

The term “problematic” as used in this subparagraph is vague and needs further clarification by ADEQ. Also, the rules should clarify what qualifies as an “inspection.”

14. Corrective action programs to be initiated under A.R.S. § 49-762.08 if soil, surface water or groundwater is contaminated.

The test for required corrective action in A.R.S. § 49-762.08.A should be used rather than “if soil, surface water or groundwater is contaminated.”

17. A training plan that assures facility personnel are trained appropriately for the activities at the facility, including safety and emergency procedures, and to comply with the requirements of this chapter

ADEQ should clarify who constitute “facility personnel” subject to this training requirement. ADEQ should also clarify how much training is required and how frequent does the training need to be conducted.

18. Any measures taken to ensure the protection of children at learning sites

This provision should be limited to learning centers within a certain radius or eliminated altogether.

R18-13-405. Operating Record.

This Section requires solid waste facilities to maintain an operating record for each day activity occurs at the facility. Subsection B, requires the record include the type and weight or volume of each load received. Generally, only municipal solid waste facilities have scales to measure the amount of solid waste they receive. Furthermore, many types of solid waste facilities do not have operators at the site at all times. To keep the type of daily record required by the draft rules, a full-time operator would need to be present at the facility.

Under the draft rules, facilities are required to record any deviations from operations plans. What is a “deviation?” Facilities should not be required to self audit and self disclose any such deviations. Such notice is not authorized by the Solid Waste Statute.

Subsection B.4 requires monitoring and test results to be included in the operating record. This should be limited to monitoring and testing required by the solid waste facility plan.

Finally, facilities are required to maintain training records for those operating the facility. ADEQ has not identified the relevant training that is required for these operators and, therefore, ADEQ should clarify what training is required or eliminate this requirement.

Subsection C requires that these records be maintained for 60 months. This goes well beyond the requirements that are applicable under the federal Resource Conservation and Recovery Act for hazardous waste record retention required in Arizona, which are only required to be kept for three years. This provision should be modified to reduce the record retention requirement to a reasonable time, which at most should be three years.

R18-13-406. Annual Report.

This Section requires solid waste facilities to submit an annual report to ADEQ each year describing operations for the previous year. Arizona's Solid Waste Statute, however, does not specify that facilities are required to submit such a report to ADEQ and, therefore, this requirement should be eliminated. Additionally, Subsection B.1 requires certain basic information be included in the report which duplicates information previously submitted to ADEQ. As such, if this provision is retained any duplicative information should not be required in the annual report.

R18-13-407. Storm water Run-on and Run-Off Control System.

Storm water is not a solid waste issue and should not be part of the solid waste rules. Since storm water is regulated under other ADEQ regulations, these requirements are duplicative and are not necessary in the solid waste rules. *See* 49 A.R.S. § 49-761(A). Furthermore, if the storm water program does not regulate storm water discharges from a facility, the solid waste regulations should not be more stringent than the storm water program and should not regulate such storm water.

R18-13-408. Waste Identification and Screening.

This Section requires facilities implement a waste identification program at a facility and also a program to screen wastes received by a facility. This requirement should only apply to facilities that receive off-site wastes, since facilities have knowledge of the wastes they have on-site.

This Section requires random inspections of incoming loads. As previously stated, many types of solid waste facilities do not have operators at the site at all times. This requirement implies that a full time operator is required for all types of solid waste facilities. This is too burdensome for smaller facilities, such as transfer facilities.

Subsection C also requires notification to the ADEQ within 24 hours after discovery of wastes which are not authorized to be handled by that type of facility. This type of notification is not required by the Solid Waste Statute and should be eliminated. Furthermore, this notification requirement would impose a significant burden on the solid waste facility and ADEQ, since solid

waste facilities frequently receive unauthorized waste from residences (e.g., tires, batteries, appliances with CFCs) that are sorted and sent to an authorized facility for that type of waste. Finally, the requirement in Subsection C.6 is vague.

R18-13-409. Control of Public Access; Safety and Security; Prevention of Scavenging and Unauthorized Dumping.

This Section imposes requirements on facilities to control public access to solid waste facilities and to prevent scavenging and unauthorized dumping. Additionally, facilities are required to post a sign identifying the facility which contains other information such as facility hours and acceptable materials. These requirements, and likely the entire Section, should apply only to facilities that are open to the public for solid waste management services.

Subsection B requires a sign at the entrance of the facility that has specific information and “other necessary information.” This reference to “other necessary information” should be deleted.

Subsection C requires the facility to have “communication capabilities” to immediately summon emergency personnel. ADEQ should clarify that mobile communications satisfy this requirement.

R18-13-410. Dust, Litter and Vector Control; Open Burning Prohibited.

This Section requires solid waste facilities to be designed, constructed and operated to control dust and wind-blown litter and develop a plan that includes the equipment and methods that will be used to contain litter and a schedule to collect such litter. In addition, no open burning is allowed unless permitted by the ADEQ’s air regulations. Since both dust and burning are regulated by ADEQ and county air regulations, the provisions addressing those requirements are duplicative of other laws and should be eliminated. Additionally, the provisions addressing litter, requiring equipment and schedules to collect litter should only apply to landfills and not all solid waste facilities. Furthermore, the requirement for landfills should be made consistent with 40 C.F.R. Part 258. Finally, a solid waste facility should be allowed to address these items in the solid waste facility plan instead of a separate plan.

R18-13-411. Containers and Tanks.

Subsection A requires containers used to handle solid waste meet certain standards including being watertight, leak-proof and closed with a lid. Most roll-offs would not meet this standard. ADEQ should not require all containers meet these requirements. Instead, ADEQ should require that containers be designed to contain the type of waste being placed in the container.

Subsection B requires tanks used to handle solid waste meet certain standards including requiring tanks where all or any portion of the tank is below ground comply with 40 C.F.R. § 280.11(a) and above ground tanks be equipped with secondary containment. There are many

types of below grade tanks that are exempt from Section 280.11(a). This Subsection should recognize such exemptions.

The requirements in Subsection B are more stringent than the hazardous waste regulations as well as the spill prevention control and countermeasures ("SPCC") regulations. As such, these requirements should be modified to reflect a more reasonable approach to regulating tanks. ADEQ should explain why such stringent requirements are needed for tanks.

R18-13-412. Contingency Planning.

This Section requires a separate contingency plan. A facility should be allowed to put its contingency measures in its solid waste facility plan instead of a separate plan. Furthermore, the requirements for contingency planning are similar to the contingency planning requirements for a permitted hazardous waste facility. ADEQ should explain why such stringent requirements are needed for solid waste.

Subsection C of the contingency plan regulations require the plan include provisions for immediate notification to ADEQ regarding any immediate response measures taken. This notification requirement is not authorized by the Solid Waste Statute and therefore should be eliminated.

Subsection F requires prompt revision of the contingency plan upon any change to the information in the plan. This requirement should be tempered to only require update to the plan where the changes are material. Furthermore, there should be time allowed to amend a plan, such as 30 days.

R18-13-413. Closure.

As previously stated, a facility should be allowed to address closure in its solid waste facility plan instead of a separate closure plan.

Subsection C requires the owner or operator of a solid waste facility to notify ADEQ of the intent to close the solid waste facility 90 days prior to the closure. Additionally, the owner or operator must also post signs to notify the general public of the proposed closure date. The notice to ADEQ is not authorized by the Solid Waste Statute and should therefore be eliminated.

Subsection D requires immediate closure for facilities that have temporarily ceased operation for 365 consecutive days. Circumstances may exist where a facility does not accept any solid waste for periods greater than 365 days but that is nevertheless scheduled to accept solid waste in the future. Requiring the facility to immediately begin closure is a waste of landfill capacity in these situations and the regulations should be modified to permit longer periods of inactivity so long as the facility complies with its solid waste facility plan.

Subsection E provides closure requirements that include the following:

3. Decontaminate any buildings, fences, roads, equipment or other improvements related to solid waste handling storage, treatment or disposal.

The term "decontaminate" is vague as used in this provision and should be clarified by ADEQ.

6. Begin closure activities no later than 30 days after the date on which the solid waste facility receives the final shipment of wastes.

This is an extremely short period after which facilities are required to commence closure activities. ADEQ should modify this requirement to allow facilities more time to begin closure activities. A period of 90 days would be more appropriate.

7. Complete closure activities with 90 days after the date on which closure activities begin, unless the Department approves a reasonable extension of the closure deadline based upon an application and demonstration by the owner or operator of good cause for the extension and that the closure will otherwise meet the requirements of this Subsection.

ADEQ should provide longer periods for large solid waste facilities that cannot complete closure activities within 90 days rather than place additional burdens on large facilities to petition ADEQ for an extension. For example, 180 days should be allowed for landfills.

Subsection F requires facility to certify to ADEQ that the clean closure requirements have been met within 30 days after completion. This provision should not apply to self certification or best management practice facilities.

Subsection G states that facilities that are not closed pursuant to Subsection E are deemed to be solid waste land disposal facilities subject to plan approval. This new status is not allowed by statute and is very burdensome. For example, if a facility does not meet Subsection 413, it should not be deemed to be a land disposal facility.

R18-13-415. Financial Assurance.

Subsection A requires facilities to have financial assurance in place 180 days after the effective date of the regulations. This requirement should be modified to require that the financial assurance documentation be submitted within this time frame rather than be approved and in place.

ARTICLE 5

R18-13-501. Requirements for Solid Waste Facilities Subject to Self-Certification.

Subsection A requires owners or operators of solid waste facilities to establish their eligibility by demonstrating to ADEQ compliance with the self-certification requirements. ADEQ should clarify what is meant by “demonstrating” as used in this Subsection. If the term involves some sort of approval, then it is not “self-certifying.”

Subsection B requires owners or operators of new self-certification solid waste facilities to submit a demonstration that the facility meets the siting requirements of A.A.C. R18-13-403 as well as the standards of Article 4. If all of Article 4 is applicable to all solid waste facilities, then the reference to the siting requirements, which are part of Article 4, is redundant.

Subsection C requires the owner or operator of a new solid waste to provide certain information to ADEQ prior to beginning operation. These requirements are as follows:

3. A demonstration that the facility achieves the design and construction standards of Article 4 and any other Article applicable to that type of solid waste facility. This demonstration shall be sealed by a professional engineer registered in Arizona.

Requiring a professional engineer to seal the self certification demonstration is not allowed by statute. Several of the provisions of Article 4 are operational or otherwise do not implicate engineering design/construction standards. Therefore, any engineering certification, if required, should be limited to only those provisions that are related to engineering design and construction.

4. A demonstration of the issuance of other environmental permits required by statute or rule for that type of facility

The solid waste rules should not duplicate requirements imposed by other programs. As such, this provision should be eliminated.

Furthermore, Subsection B also requires a demonstration that the design of the facility meets the requirements of Article 4 and be sealed by a registered professional engineer. This requirement appears to be duplicated by the requirements in paragraph 3 in Subsection C. If so, one provision should be eliminated.

Subsection D applies to existing facility and contains similar provisions as Subsection C. Therefore issues identified for Subsection C apply to this Subsection as well.

Subsection E requires compliance with the registered professional engineer demonstrations where the solid waste facility makes a substantial change to the facility. The regulation then identifies changes that are considered substantial as follows:

1. An increase in the design capacity of a solid waste facility relative to the design capacity described in the solid waste facility notice and most recent self-certification submittal for that facility
2. A change in the type of solid waste handled relative to the description of the type of wastes handled in the solid waste facility notice and self-certification submittal for that facility.
3. A material change in the waste management practices at the solid waste facility.
4. A material change in the pollution control devices at the solid waste facility.
5. A material change in the system for controlling run-on and run-off.
6. A material change in the closure plan for the solid waste facility.
7. A change in the cost estimate for closure and post closure-care.

Pursuant to the Solid Waste Statute, a Type III substantial change is defined to include changes that “require detailed review by the department..., changes that are required by statute or regulation or other substantial changes that are not Type IV changes.” Furthermore, a Type IV substantial change is defined to include “significant changes in the total storage, process, treatment or disposal capacity of the solid waste facility... [as well as] a lateral expansion of an existing solid waste landfill or the addition of a process or a major piece of equipment for which the net effect of the change will be an increase in discharges.” A.R.S. § 49-762.06.A.3 & . ADEQ’s definition of a “substantial change” should be modified to comport with the statutory Type III or IV change.

R18-13-502. Requirements for Solid Waste Facilities Subject to Plan Approval; Application Requirements.

The Section requires plan approval facilities to establish eligibility to the Department by submitting certain information prior to construction. ADEQ should clarify, that this provision does not apply to existing facilities. Subsection B requires the application include a location map identifying any learning sites in surrounding area. ADEQ should define the limits of the surrounding area to a defined radius.

Subsection C requires the owner or operator of the solid waste facility to maintain the “technical capability” necessary to carry out the approved plan and is required to make this demonstration by submitting the following information for each person principally responsible for designing, constructing, or operating the facility:

- Pertinent licenses or certifications held by the person
- Professional training relevant to the design, construction, or operation of the facility.

- Work experience relevant to the design, construction, or operation of the facility.

ADEQ should eliminate this provision since it does not provide the regulated public any meaningful guidance to know whether it is complying with the regulation. If ADEQ insists on retaining this provision, ADEQ should define what it means by “technical capability” and the standards that must be met for each type of facility and identify the licenses, training, work experience that is necessary.

Subsection C.5 requires the applicant to provide a detailed description of best available demonstrated control technologies (BDCAT). This should not be required if the applicant is relying on a presumptive BDCAT design or does not “discharge.”

Subsection C.10 allows ADEQ the discretion to require “any other relevant information.” This Subsection should be deleted as it provides no certainty to the applicant and provides too much discretion to ADEQ.

Subsection D requires the application for a landfill to provide a water balance model. This requirement is not provided for by statute, and should be deleted.

R18-13-503. Requirements for Solid Waste Facilities Subject to Plan Approval; Construction Quality Assurance and Construction Quality Control Plans for New or Expanded Solid Waste Facilities.

Subsection A calls for separate construction quality assurance and quality control plans. ADEQ should allow construction quality assurance and quality control to be addressed in the solid waste facility plan instead of a separate plan. Additionally, the facility plan should be allowed to cover all phases of construction.

Subsection A requires facilities to develop a quality assurance and quality control plan that includes a “description of the required level of experience and training for the contractor, the contractor’s crew, each subcontractor and each subcontractor’s crew...” Requiring this level of detail of experience and training, down to each subcontractor’s crew, is excessive and this provision should be modified to exclude at least the subcontractor’s crew. Additionally, Subsection A requires testing protocols during construction and includes, among other things, sampling and field test procedures and equipment to be used, list of construction equipment to be used, sampling protocol for field testing, laboratory procedures, limits for test failure. These requirements may be appropriate for a solid waste landfill with a liner, but are excessive for other plan approval facilities.

Subsection A.3 requires that all of the listed elements be included in the construction quality assurance and quality control plans. Many of these elements may not be applicable to the construction of a solid waste facility. Thus, the Subsection should be revised to change the “shall” to “may.”

R18-13-505. Types of Changes to Approved Plans for Solid Waste Facilities Subject to Plan Approval; Criteria for Determination.

This Section defines a Type I, II, III and IV change. These changes are defined in the Solid Waste Statute and the regulatory definitions differ some with the statutory definitions. To provide clarity, these definitions should not be defined again by ADEQ, but rather the statutory definitions should control. In addition each definition includes the qualifier that the change “is not otherwise described as a Type II, III or IV change.” This definition is confusing when used in multiple definitions since a change that is not specifically identified in the change types it meets the definition of all the change types. This is an absurd result and the qualifier should only attach to one type of change.

The list of Type III changes in Subsection C should be limited to those substantial changes that require detailed review by ADEQ. For example, ADEQ has listed all changes to a closure plan or post-closure plan as a Type III change. If the change to a plan is not substantial (e.g., change in facility personnel), the change to the plan should not be a Type III change. A change to financial assurance for adjustments for inflation should not be a Type III change. A change of like-kind equipment should not be a Type III change.

In the past, ADEQ has followed a policy that changes to the capacity of a facility that are less than 10% are not Type IV changes. This policy should be included in the draft rules.

Finally, Subsection D, Paragraphs 1 and 2 do not comport with the statutory language since any change in total storage, process etc. constitutes a Type IV change rather than a significant change as required by the Statute. Also, the draft rules include vertical slope increase and vertical expansions as Type IV changes whereas the Statute only includes lateral expansions as Type IV changes. These definitions should be eliminated and referenced to the Statute or the precise statutory definitions should be included.

R18-13-507. Suspension or Revocation of All or Part of an Approved Facility Plan.

This Section provides several situations where ADEQ may suspend or revoke an approved plan and includes situations where activities cause or will cause a violation of an Aquifer Water Quality Standard at a point of compliance, a discharge permitted by an approved facility plan is causing or will cause imminent and substantial endangerment to public health or the environment, or and owner or operator failed to maintain financial assurance. Pursuant to the Solid Waste Statute, these are not permissible reasons for suspension or revocation.

R18-13-508. Termination of All or Part of an Approved Facility Plan.

Subsection A permits ADEQ to terminate all or part of an approved facility plan at the request of the owner or operator if the facility has closed in compliance with the regulations. Subsection B permits ADEQ to terminate all or part of an approved facility plan or a modification if the proposed construction is not begun within 18 months, or work is suspended for a period of 18 months. There is no statutory authority allowing ADEQ to terminate approved

facility plans as described under either Subsection. As such, ADEQ should eliminate these termination provisions. Furthermore, under Subsection B, facilities may need to delay construction for more than 18 months while waiting for other necessary governmental approvals prior to construction (e.g., waiting for zoning approvals). Therefore, even if these termination provisions are included in the final rules, the 18 month time period in Subsection B should be modified to account for necessary delays.

ARTICLE 6

R18-13-601. On-site Solid Waste Handling Facilities; Applicability.

Subsections A and B, listing the applicability of the Section (on-site solid waste handling facilities) and the solid waste facilities that are not covered by the rule are confusing. ADEQ should clarify the types of solid waste facilities that are covered by the Section. For example, ADEQ should clarify that facilities exempt from the definition of “solid waste facility” are not regulated under Article 6.

Subsection A also states that “[i]n addition to complying with the best management practices described in 18 A.A.C. 13, Article 4, an on-site solid waste handling facility shall comply with this Article.” Notwithstanding this general incorporation of all the Article 4 requirements, several subsequent sections incorporate specific Article 4 provisions. If all of the Article 4 requirements are applicable to all these best management practices facilities, then the initial incorporation in Subsection A is sufficient. ADEQ’s subsequent incorporation of specific Article 4 provisions is confusing. For instance, R18-13-602 incorporates the siting criteria in Article 4 and R18-13-606 incorporates the closure requirements of Article 4.

R18-13-603. On-site Solid Waste Handling Facilities; Design and Construction Standards.

Subsection A requires owners or operators of on-site waste handling facilities to:

1. Assure that all waste handling areas are constructed of durable and easily cleanable materials.
2. Provide protection of the handling area from wind, rain or snow.
3. Provide all-weather surfaces for all areas subject to vehicular traffic.

These requirements are vague and ADEQ should clarify what is required. For example, does ADEQ intend that all solid waste facilities be indoors under Subsection A.2? Additionally, does ADEQ intend that facilities that have a solid waste facility at their site pave all roads and parking lots at the site since there is no limitation in Subsection A.3 limiting the all-weather surfaces to areas associated with solid waste facility? ADEQ should explain why these requirements are needed and modify these provisions to clarify its intent. ADEQ also should explain what is meant by “durable” and “easily cleanable.”

Subsection B requires owners or operators of on-site waste handling facilities handling putrescible waste, contaminated soil, or waste likely to produce leachate to comply with the following:

1. Provide that waste that is stored or processed is placed on a floor having curbs and an impervious surface, such as sealed concrete, to prevent soil, groundwater, and surface water contamination. The surface shall be durable enough to withstand cleaning and material handling practices.
2. Provide for a leachate and washdown water collection and removal system.

These provisions are too narrowly defined. ADEQ should modify these provisions to allow for other waste handling measures to achieve ADEQ's objective. For example, why are leachate and washdown water collection systems required when most waste at an on-site handling facility will not generate leachate and the facility will not use washdown water? Why is a floor system being prescribed, when there are other methods to store putrescible waste or contaminated soils? A common practice for contaminated soils is to store them on a liner. Subsection B would not allow this practice.

R18-13-604. On-site Solid Waste Handling Facilities; Wastes Prohibited or Requiring Special Handling.

Subsection A describes wastes that must be separated for special handling and includes liquid wastes (except as provided in Subsection B), any wastes, including polychlorinated biphenyl waste, subject to 40 C.F.R. Parts 700 to 766, and asbestos-containing waste material in 40 C.F.R. § 61.141. These limitations are too restrictive. The restriction on polychlorinated biphenyls should include a concentration limit (e.g., 50 ppm), such that materials containing less than a specified concentration may be handled at the on-site solid waste handling facility. The asbestos-containing material restriction should be limited to "regulated asbestos-containing material."

Subsection B, dealing with liquids that may be handled on-site, provides that used oil may be handled on-site provided it is "handled according to the used oil generator requirements described in 40 CFR part 279 Subpart C, and if the used oil is stored in a container or tank meeting the requirements of R18-13-411". This provision imposes additional container and tank requirements on used oil storage that are more stringent than the federal used oil regulations and are not authorized by Arizona's Used Oil Statute. Pursuant to A.R.S. § 49-802.B., ADEQ "may adopt rules for the administration of the federal program. Rules adopted pursuant to this Subsection shall not be more stringent than or conflict with 40 Code of Federal Regulations part 279." As such, ADEQ should eliminate the tank and container requirements in this Subsection.

Subsection B requires liquid waste that is household waste to be stored in a specific type of container, labeled and dated. This is an overly burdensome requirement that probably will not be followed by households. ADEQ should explain why these requirements are needed.

Subsection B only covers household liquids, used oil and septage. How are other liquids to be managed? ADEQ should allow for the management of other liquids.

The requirements in Subsection B.3 are too stringent and the scope of the Subsection is unclear. For example, does the Subsection apply to privies that handle septage? What is meant by “fly-tight”? The requirement for septage to be managed “as quickly as possible” is vague. The requirement to cleanup dropped or spilled septage needs to have some limitation. It is unreasonable to require cleanup of every drop. Also if the dropped or spills septage is cleaned up, why does the area need to be disinfected?

Subsection C provides for handling of hazardous waste and provides that it may be handled at an on-site solid waste handling facility provided the waste is separated from other solid wastes and there is not commingling of incompatible wastes and the container or tank used to store the wastes meets the requirements of R18-13-411, is labeled and the date of generation is indicated. These requirements go beyond what is required under the federal hazardous waste regulations as incorporated in Arizona. Pursuant to A.R.S. § 49-922.A, ADEQ “shall not adopt a nonprocedural standard that is more stringent than or conflicts with those found in 40 Code of Federal Regulations sections 260 through 268, 270 through 272, 279 and 124.” Therefore, these hazardous waste cannot be regulated more stringently than they are under the federal regulations.

R18-13-605. On-site Solid Waste Handling Facilities; Operating Standards.

Subsection A requires on-site handling facilities to be protective of human health and the environment. This is a vague standard. The purpose of the draft rules is to define what is protective of human health and the environment.

Subsection B requires the on-site solid waste handling facility to inspect the facility at least weekly. These types of inspections are not required under the federal Resource Conservation and Recovery Act for hazardous wastes, which pose much greater dangers to human health and the environment than do solid wastes. Therefore, requiring solid waste facilities to conduct inspections where the hazardous waste management scheme does not is unwarranted.

ARTICLE 7

R18-13-701. Intermediate Solid Waste Handling Facilities; Applicability.

Subsection A and B, listing the applicability of the Section (on-site solid waste handling facilities) and the solid waste facilities that are not covered by the rule are confusing. ADEQ should clarify the types of solid waste facilities that are covered by the Section.

R18-13-703. Intermediate Solid Waste Handling Facilities; Design and Construction Standards.

See comments for R18-13-603.

R18-13-704. Intermediate Solid Waste Handling Facilities; Wastes Prohibited or Requiring Special Handling.

See comments for R18-13-604.

Subsections B and E are more stringent than the federal hazardous regulations and should be deleted because they are inconsistent with A.R.S. § 49-922.A.

Subsections C and D require separation of special waste and waste tires upon receipt at the intermediate solid waste handling facility. Why is separation needed if the disposal facility where the waste is being sent can manage the wastes even if they are commingled? Also, separation should not be required “upon receipt” but before the waste is sent off-site.

Subsection F requires solid wastes that are accepted at intermediate solid waste handling facilities that are drop boxes be bagged and tied unless the waste is bulky and nonputrescible. This bagging and tie restriction is too restrictive and should be eliminated.

Subsection G limits the types of liquid wastes that can be placed in drop boxes to household wastes. Because other types of liquids are restricted, the provision will end up encouraging non-household liquids to be improperly disposed. ADEQ should allow non-household liquids in small closed containers to be placed in drop boxes.

R18-13-705. Intermediate Solid Waste Handling Facilities; Operating Standards.

Subsection A requires intermediate solid waste handling facilities be operated to “[m]aintain the intermediate solid waste handling facility to ensure adequate dumping capacity at all times. Storage of waste outside an intermediate solid waste handling facility is prohibited.” ADEQ should provide facilities with some leeway, since facilities cannot always predict capacity needs in advance. Additionally, this Subsection requires all-weather surfaces for vehicular traffic. ADEQ should clarify what all-weather surfaces means, asphalt/pavement and limit this to areas associated with the solid waste facility. Finally, this Subsection requires that intermediate solid waste handling facilities provide one or more attendants on-site during hours of operation. This is an extremely burdensome requirement and should not be mandatory for these types of facilities.

Subsection B requires contaminated soil stored in piles to be characterized prior to storage and prior to removal to an off-site location to ensure delivery to a solid waste facility that is authorized to handle that type of solid waste. Requiring characterization prior to storage in waste piles is not warranted and should be eliminated from the rule. Additionally, characterization prior to off-site transfer to ensure the waste is delivered to a facility that is authorized to handle the waste should be limited to facilities in Arizona to avoid violating the Commerce Clause of the U.S. Constitution.

Subsection C requires facilities that store contaminated soil in waste piles to include in the operational plan a description of contaminants and concentrations in soil that will be handled

at the site, a sampling and analysis plan and other procedures used to characterize soil and forms used to record the source of contaminated soil, contaminant concentrations, end use and the location of final placement. These requirements should be modified to permit facilities to use generator knowledge rather than sampling and testing all contaminated soils.

Subsection D permits facilities that are drop boxes to post telephone numbers to summon fire, police, or emergency service personnel in the event of an emergency. ADEQ should consider whether these are the appropriate personnel to contact for issues related to a drop box.

Subsection E requires the intermediate solid waste handling facility to inspect the facility at least weekly. These types of inspections are not required under the federal Resource Conservation and Recovery Act for hazardous wastes, which pose much greater dangers to human health and the environment. Therefore, requiring solid waste facilities to conduct inspections where the hazardous waste management scheme does not is unwarranted.

Subsections F and G require intermediate solid waste handling facilities to establish and maintain operating records as well as submit an annual report. This is an excessive burden, requiring these types of records for intermediate facilities that may constitute a roll-off located within an industrial facility. Since these are intermediate facilities, ADEQ can obtain the information that would be submitted when the waste is transferred to a facility for ultimate disposal. Therefore, these requirements should not apply to intermediate solid waste facilities.

ARTICLE 8

R18-13-801. Solid Waste Treatment Facilities; Applicability.

Subsection A and B, listing the applicability of the Section (on-site solid waste handling facilities) and the solid waste facilities that are not covered by the rule are confusing. ADEQ should clarify the types of solid waste facilities that are covered by the Section.

R18-13-802. Solid Waste Treatment Facilities; Siting Criteria.

Subsection B prohibits a solid waste treatment facility from being located within one mile from any learning site. Treatment facilities can be as simple as a compactor that is used to compact waste before it is picked up. Why is ADEQ prohibiting such activities within one mile from any learning site?

R18-13-803. Solid Waste Treatment Facilities; Design and Construction Standards.

See comments for R18-13-603. Additionally, Subsection A requires owner and operators of solid waste facilities comply with air quality and water quality requirements of A.R.S. Title 49 Chapters 3 and 2 respectively. The solid waste rules should not address other regulatory program requirements. As such, ADEQ should eliminate these provisions.

This Subsection also requires owners and operators “[e]nsure that all treatment of solid wastes by combustion maximizes combustion of the waste and minimizes any potential for fire,

explosion, safety hazard, or public health effects.” This provision does not provide the regulated community any meaningful standards to know whether they are complying with the rules. Therefore, ADEQ should provide quantitative standards for combustion and define the ambiguous phrase “minimize any potential for fire, explosion, safety hazard, or public health effects.”

Subsection A.3 refers to “process residues.” ADEQ needs to define these terms. Subsection A.4 requires that the processing floors be free from standing water. There needs to be a time allowed for water to stand until it is collected. ADEQ should allow standing water for at least a day.

R18-13-804. Solid Waste Treatment Facilities; Wastes Prohibited or Requiring Special Handling.

See comments for R18-13-604.

R18-13-805. Solid Waste Treatment Facilities; Operating Standards.

Subsection A applies to the treatment of liquids or semisolid materials. Does this Subsection apply to facilities that treat solid waste prior to discharge to a POTW? Such facilities should not be regulated by the draft rules because they are already required under other state and local laws.

Subsection B requires solid waste treatment facilities to inspect the facility at least weekly. These types of inspections are not required under the federal Resource Conservation and Recovery Act for hazardous wastes, which pose much greater dangers to human health and the environment than solid wastes. Therefore, requiring solid waste facilities to conduct inspections where the hazardous waste management scheme does not is unwarranted. In addition, this Subsection requires facilities to develop a training plan that will ensure treatment equipment is operated to design and manufacturer’s specification as well as assure employees are trained to handle incoming wastes. These training requirements are vague and ADEQ should specify precisely the type, duration and recurring obligations for training.

Subsection D.2 requires that the treatment of contaminated soils use a process that reduces contaminants. This is too restrictive, in that some contaminated soils (e.g., metal contaminated soils) are treated by solidification or stabilization processes because the contaminant level cannot be reduced.

Subsection F imposes requirements on treatment facilities that are very burdensome. Similar requirements do apply to other types of solid waste facilities. ADEQ should eliminate Subsection F.2 and F.4.

Subsection G.2 is vague and should be deleted. The purpose of the draft solid waste rules is to establish design and operating standards that a facility should follow to be protective of human health and the environment. Subsection G.2 does not provide any meaningful standard.

ARTICLE 9

R18-13-901. Solid Waste Composting Facilities; Applicability.

Subsection A and B, listing the applicability of the Section (a commercial or government-owned household compost facility) and the solid waste facilities that are not covered by the rule are confusing. ADEQ should clarify the types of solid waste facilities that are covered by the Section.

R18-13-902. Solid Waste Composting Facilities; Siting Criteria

The Solid Waste Statute contains siting criteria for solid waste facilities, which are limited to facilities required to obtain solid waste plan approval. The Section should be amended to apply only to commercial and government-owned household waste composting facilities. Also, the siting criterion in Subsection B.1 are not provided for in statute and should be deleted.

R18-13-903. Solid Waste Composting Facilities; Design and Construction Standards.

See comments for R18-13-803. Additionally, Subsection A requires compost facilities that use sewage sludge or any other material likely to produce leachate to be placed on a surface such as concrete, clay or artificial liner that prevents. This Subsection is too restrictive and should be revised to address the leachate rather than the surfaces on which the sewage sludge is placed. Subsection B, likewise imposes surface and containment requirements. ADEQ should revise this requirement to allow other equally protective facilities.

Subsection A.3 requires in-vessel processing for specific types of wastes, including municipal solid waste. This provision should be revised to exclude landscaping waste from residences.

R18-13-904. Solid Waste Composting Facilities; Wastes Prohibited or Requiring Special Handling.

See comments to R18-13-604. Subsection B.2 should be revised to remove the requirement for liquids to be used within 24 hours. If the liquids are being stored pursuant to draft R18-13-411, there should not be a time requirement for use.

R18-13-905. Solid Waste Composting Facilities; Operating Standards.

Subsection B requires operating records to include records of time and temperature. ADEQ should specify the frequency of this type of monitoring. Subsection C requires the solid waste composting be operated to handle by-products removed during the composting process in a sanitary and nuisance-free manner. ADEQ should clarify the meaning of the vague terms "sanitary and nuisance-free" to ensure the regulated community can comply with this standard. This Subsection also requires the produced compost to not contain sharp particles which could cause injury to anyone. ADEQ should also clarify what is meant by "sharp particle."

R18-13-906. Solid Waste Composting Facilities; Closure.

This Subsection provides the closure requirements for solid waste composting facilities. However, this Subsection does not clarify whether these closure requirements are in place of those specified in Article 4 or in addition thereto. ADEQ should specify that the closure requirements are in lieu of the Article 4 provisions since R18-13-901(B), provides “[i]n addition to complying with the design and operating requirements described in A.A.C. 13, Article 4....”

ARTICLE 10

ADEQ should clarify that this Article does not regulate facilities that do not manage a “solid waste,” which is defined to be a discarded material. For example, the Article should not regulate a production process that is reusing secondary material generated by the process.

R18-13-1001. Standards for Determining Whether a Site is a Recycling Facility.

The standards ADEQ use in this Section to define a “recycling facility” are not consistent with the Solid Waste Statute. The statute limits “recycling facilities” to those that handle wastes that have a significant adverse effect on the environment. A.R.S. § 49-701.26. Many of the standards in this Section are not consistent with the statute. For example, in Subsection A, ADEQ defines all “material recovery facilities” to be “recycling facilities” regardless of the type of solid waste managed at the “material recovery facility.” The regulatory definition of “material recovery facility” is “any facility that collects, compacts, repackages, sorts or processes for transport solid waste for the purpose of recycling.” This definition practically includes the universe of recycling. Imposing recycling facility obligations on such activities as benign as packaging cardboard for recycling would be a disincentive for entities to engage in such practices. ADEQ should revise this Section to include only recycling facilities as defined by statute.

Subsection B includes as a “recycling facility” any facility that handles for recycling solid waste that contains a hazardous substance if the recycling could result in release of the hazardous substance. Most, if not all, solid waste contains some level of hazardous substances. The fact that a waste contains a hazardous substances does not make the facility a “recycling facility” under the statutory definition of such term.

Subsection C defines a recycling facility to include a site that treats or processes “paper, cardboard, household textiles or any other solid waste...” if such treatment “typically generates” hazardous substances that were not present in the waste prior to treatment. How can a waste contain a hazardous substance that was not present in the waste prior to treatment? Does ADEQ intend to cover only those recycling processes that add additional hazardous substances to the waste being recycled?

Subsections D and F regulate facilities that “store” certain types of waste prior to recycling or composting. These Subsections should be revised to clarify that the mere storage of

the listed wastes at the site of generation does not cause a facility to become a “recycling facility” or “compositing facility”, but that the facility must store and recycle.

R18-13-1003. Recycling Facilities; Siting Criteria.

See comment to R18-13-903. Ironically, there are learning sites that conduct recycling activities. In fact, ADEQ has offered grants to learning sites to encourage recycling.

R18-13-1004. Recycling Facility; Design and Construction Standards.

See comment to R18-13-603. Also, Subsection 1 should be deleted because it duplicates existing state law. Subsection 3 should be limited to releases in excess of reportable quantities listed in A.R.S. § 49-284.

R18-13-1005. Recycling Facility; Wastes Prohibited or Requiring Special Handling.

See comments to R18-13-604. ADEQ should allow recycling facilities to “handle” such prohibited wastes if they are separated out and not recycled. Often these prohibited wastes will show up at a recycling facility. The recycling facility will sort them out and send the prohibited wastes to a facility authorized to manage such wastes.

Subsection D adds additional requirements to the management of hazardous waste and should be deleted because such additional requirements are not allowed by A.R.S. § 49-922.A.

R18-13-1006. Recycling Facility; Operating Standards.

Subsection B.2 requires the owner or operator to maintain the facility “to be protective of human health and the environment.” This standard is vague and should be deleted.

Subsection B.4 requires the collection of windblown material at least once each day of operation. This requirement should only apply to recycling facilities that are outdoors.

Subsection B.5 requires the recycling facility be operated to handle by-products removed during the recycling process in a sanitary and nuisance-free manner. ADEQ should clarify the meaning of the vague terms “sanitary and nuisance-free” to ensure the regulated community can comply with this standard.

R18-13-1007. Recycling Facility; Closure.

This Subsection provides the closure requirements for recycling facilities. However, this Section does not clarify whether these closure requirements are in place of those specified in Article 4 or in addition thereto. ADEQ should specify that the closure requirements are in lieu of the Article 4 provisions since R18-13-1002(B), provides “[i]n addition to complying with the best management practices described in Article 4....”

This Subsection also requires a facility to “prevent dust.” This standard is impossible to meet, since some minor amount of dust cannot be prevented by best management practices. ADEQ should change this requirement to require the facility to implement dust control measures.

ARTICLE 11

ADEQ is not allowed to adopt non-procedural requirements for landfills that are more stringent than 40 C.F.R. Part 257 (for non-municipal solid waste landfills) or Part 258 (for municipal solid waste landfills) and the Aquifer Protection Permit Program. There are many requirements in this Article that are more stringent than these laws. ADEQ should eliminate all such requirements for Article 11.

Furthermore, Article 11 should clarify that certain types of landfills are not regulated under Article 11, such as asbestos landfills that are regulated under A.R.S. § 49-762.02.6.

R18-13-1101. Municipal Solid Waste Landfills and Solid Waste Land Disposal Facilities; When Solid Waste Placed on the Ground is Considered a Solid Waste Land Disposal Facility; Applicable Standards.

Subsection B creates a presumption that solid waste that remains at a facility for more than one year is to be land disposed. ADEQ should remove the presumption. Many facilities store solid waste in proper containers or tanks for more than a year, especially if the solid waste has recycling value. This activity is not land disposal.

If ADEQ insists that it needs a presumption of land disposal, it should provide a mechanism to rebut the presumption.

R18-13-1102. Municipal Solid Waste Landfills and Solid Waste Land Disposal Facilities; Siting Criteria.

The Solid Waste Statute contains siting requirements for landfills. The draft rules contain requirements beyond the statute. For example, Subsection 7.c is not found in statute. The statute only applies to landfills, while this Section applies to all land disposal facilities. ADEQ should make this Section consistent with statute.

R18-13-1104. Municipal Solid Waste Landfills; Solid Waste Land Disposal Facilities That Are Non-Municipal Solid Waste Landfill Facilities or Waste Disposal Piles; Design Standards.

The design for both types of landfill facilities include liner systems, leachate collection systems, methane gas systems, and run-on and run-off control systems. Since a non-municipal solid waste landfill facility includes a facility that only accepts construction and demolition debris, these requirements appear excessive. ADEQ should consider a “tiered” approach to these design requirements based on the risks the different types of facilities pose to the environment. Also, Subsection H requires the slopes of the final cover to be between

5:1 and 3:1. Imposing these slopes impacts the capacity of a landfill, which increases the number of landfills necessary. Provided other performance criteria are met, ADEQ should allow steeper slopes on landfills.

ADEQ should clarify that this Section only applies to new facilities. Existing facilities cannot install much of the equipment or otherwise comply with many of the requirements of this Section.

Subsection F duplicates state storm water laws and should be deleted.

Subsection H requires an evapotranspiration final cover of at least 30 inches. The thickness of an evapotranspiration final cover is dependent on site-specific factors and can be less than 30 inches. ADEQ should allow for alternative thicknesses for the cover. Additionally, ADEQ should explain the basis for the 10 and 20 inch rain thresholds in Subsections H.1 and H.2.

R18-13-1105. Municipal Solid Waste Landfills; Solid Waste Land Disposal Facilities That Are Non-Municipal Solid Waste Landfill Facilities or Waste Disposal Piles; Operating Standards.

Subsection A requires on-site fire protection as determined by local and state fire control jurisdiction, control fugitive dust and prohibits open burning. These requirements are related to other regulatory programs outside of solid waste. As such, ADEQ should eliminate these provisions that result in duplicative regulation.

Subsections A.2, A.11 and A.12 are not provided in 40 C.F.R. Part 258 and should be deleted. Subsection A.9 is inconsistent with 40 C.F.R. 258.21 and should be revised to make it consistent.

The federal solid waste regulations that have been incorporated by statute provide ADEQ with the authority to develop rules to allow liquids to be placed in a landfill under a research development and demonstration (RD&D) basis. ADEQ should provide for such RD&D activities in the draft rules.

Subsection A.5 concerns safety issues that should be deleted from the solid waste rules.

Subsection B requires training for personnel to recognize unauthorized wastes. The draft rules do not describe in detail the type of training necessary, recurring training obligations or precisely which personnel are required to receive training. ADEQ should clarify these training requirements.

Subsection B.1 requires random inspections by discharging a random waste load. This should be allowed on the working face of the landfill. Additionally, the notification requirements of B.1.d should be limited to hazardous waste and PCBs as provided in 40 C.F.R. Part 258.

Subsection B.2 requires all landfills to “thoroughly compact” waste. Many landfills do not have equipment to compact waste. Why is this being required?

Subsection B.3 allows for alternative daily covers. ADEQ has already approved several types of alternative daily cover. The approved alternative daily covers should be listed in the draft rules.

Subsection C is not provided for in 40 C.F.R. Part 258 and should be deleted.

R18-13-1106. Municipal Solid Waste Landfills; Solid Waste Land Disposal Facilities That Are Non-Municipal Solid Waste Landfill Facilities or Waste Disposal Piles; Aquifer Protection Standards; Contingency Plans.

Contingency Plans are not required by 40 C.F.R. Parts 257 or 258. Thus, ADEQ should only apply to aquifer protection aspects of the draft rules. Accordingly, Subsections B.3 and B.5 should be deleted from the draft rules because they apply to non-aquifer protection aspects of a solid waste facility.

Subsections C.7 and D refer to corrective actions that are triggered if conditions in Subsection B exist at a solid waste facility. The trigger for corrective action at solid waste facilities is provided in A.R.S. 49-762.08.A. Subsections C.7 and D should refer to the statutory trigger for corrective action rather than the trigger for contingency monitoring.

R18-13-1108. Municipal Solid Waste Landfills; Solid Waste Land Disposal Facilities That Are Non-Municipal Solid Waste Landfill Facilities or Waste Disposal Piles; Aquifer Protection Standards; Monitoring Requirements.

Municipal solid waste landfills are allowed to seek a variance from groundwater monitoring under 40 C.F.R. Part 258. The draft rules should provide for a similar variance.

Subsection E requires owners and operators of a facility to maintain monitoring records for at least 10 years. This period of time is excessive.

R18-13-1109. Municipal Solid Waste Landfills; Solid Waste Land Disposal Facilities That Are Non-Municipal Solid Waste Landfill Facilities or Waste Disposal Piles; Aquifer Protection Standards; Reporting Requirements.

Subsection A requires the owner or operator of a facility to notify ADEQ within 5 days after becoming aware of a violation of a condition of the approved facility plan, other than a waste screening condition or alert level. Notifications listed in this Subsection are not authorized by statute and should be deleted.

Subsection D should be deleted because the format for monitoring results is already provided for in R18-13-1108.C.

R18-13-1110. Municipal Solid Waste Landfills; Solid Waste Land Disposal Facilities That Are Non-Municipal Solid Waste Landfill Facilities or Waste Disposal Piles; Aquifer Protection Standards; Compliance Schedule.

As stated previously, this Section should be limited to aquifer protection requirements in a solid waste facility plan. Thus, the compliance schedule, if needed, should apply only to aquifer protection requirements. Further, ADEQ should describe in the draft rules that a compliance schedule is only needed when the facility has a discharge that does not comply with aquifer water quality standards or the facility does not comply with BADCT.

R18-13-1111. Municipal Solid Waste Landfills; Solid Waste Land Disposal Facilities That Are Non-Municipal Solid Waste Landfill Facilities or Waste Disposal Piles; Closure.

This Subsection provides for closure requirements for these facilities. However, this Section does not clarify whether these closure requirements are in place of those specified in Article 4 or in addition thereto. ADEQ should specify that the closure requirements are in lieu of the Article 4 provisions.

Furthermore, the timing for initiation and completion of closure is too short for landfills. Landfills that are inactive may continue to be used for disposal after settlement of the waste. The 30 days in which to initiate closure after the final load is too soon. A landfill facility should be able to wait at least three months before beginning closure. The requirement to complete closure, including a closure report, is too short and should be extended.

R18-13-1112. Municipal Solid Waste Landfill Facilities; Solid Waste Land Disposal Facilities That Are Non-Municipal Solid Waste Landfill Facilities; Post-Closure.

The draft rules impose a 30 year post-closure period for all landfills. Because of the different types and sizes of landfills, ADEQ should establish shorter post-closure periods for landfills that handle non-municipal solid waste.

R18-13-1113. Municipal Solid Waste Landfill Facilities; Solid Waste Land Disposal Facilities That Are Non-Municipal Solid Waste Landfill Facilities; Financial Assurance Requirements.

This Section prohibits a facility from continuing to operate until it has provided financial assurance. This is inconsistent with Article 18, which allows 180 days to submit financial assurance. This Section should be change to be consistent with Article 18.

R18-13-1114. Municipal Solid Waste Landfill Facilities; Solid Waste Land Disposal Facilities That Are Non-Municipal Solid Waste Landfill Facilities; Restrictive Covenants; Requirements.

This Section imposes restrictive covenants on non-landfills. The Solid Waste Statute only allows for restrictive covenants on landfills. Non-landfills should be removed from this Section.

Most landfills have already filed restrictive covenants under A.R.S. § 49-771. Such landfills should not be subject to the requirements of this Section.

R18-13-1120. Solid Waste Land Disposal Facilities That Are Surface Impoundments; Applicability.

This Section is confusing. Does it apply to impoundments at solid waste land disposal facilities that are regulated under the storm water permit program? Does it apply to impoundments covered by an APP? ADEQ should explain in more detail what types of impoundments are covered.

R18-13-1123. Solid Waste Land Disposal Facilities That Are Surface Impoundments; Operating Standards.

Subsection A.3 requires the facility to control birds at surface impoundments. Why is this included in the draft rules? Other state and federal laws apply to protection of birds, and this Subsection should be deleted.

Subsection B requires weekly inspections of surface impoundments. This should be changed to monthly. This Subsection also requires periodic inspections of the impoundment liner. This requirement should be deleted because a leak detection system is required by the draft rules that would detect any problems with the liner.

R18-13-1125. Specified Solid Waste Facilities Subject to Plan Approval under A.R.S. § 499-762; Closure.

The location of this Section (as well as R18-13-1126 and R18-13-1127) in Article 11 is confusing because Article 11 mostly applies to solid waste land disposal facilities. ADEQ should create a separate article for these Sections.

Subsection C.1 requires the closure plan to include a site investigation plan. ADEQ should clarify that the site investigation plan is triggered only if there is a release from the facility that requires corrective action.

Subsection C.2.c requires a Declaration of Environmental Use Restriction (DUER) as part of closure. This Subsection should be deleted because the Solid Waste Statute does not require DUERs for solid waste facilities.

Subsection D requires a detailed notice of closure within 30 days after completion of closure. Subsection D.1-3 contains a lot of detail, and it will likely take more than 30 days to compile this information. ADEQ should allow for 60 days. The same comment applies to R18-13-1126.D.

ARTICLE 17

R18-13-1701. General Requirements for the Collection, Transportation and Disposal of Human Excreta.

Subsection B requires owner and operators to operate and maintain vehicles and equipment so that a health hazard, environmental nuisance, or violation of water quality standard established under 18 A.A.C. 11 is not created. The solid waste rules should not address other regulatory program requirements. As such ADEQ should eliminate these provisions

R18-13-1702. Inspection of Vehicles and Appurtenant Equipment.

This Section authorizes ADEQ to inspect vehicles and equipment used to collect, store, transport or dispose of sewage or human excreta. ADEQ's inspection authority, however, is limited to solid waste facilities. As such this provision should be eliminated.

R18-13-1703. Sanitary Requirements.

Subsection A requires the waste to be collected, stored, transported, and disposed of in a sanitary manner that does not endanger the public health or create an environmental nuisance. This provision is vague and ADEQ should clarify the meaning of "sanitary manner" and "endanger public health" to ensure the regulated community knows whether it is complying with the standards. Additionally, this Subsection requires that "[c]ontents intended for removal are transferred as quickly as possible..." ADEQ's use of the term "quickly as possible" provides little certainty to the regulated community as to whether the transfer met this standard. As such ADEQ should replace this term with one that provides more certainty.

ARTICLE 18

ADEQ is requiring all solid waste facilities to comply with Article 18. The cost to comply with Article 18 will likely exceed \$10,000. For small solid waste facilities, the cost to comply with Article 18 will exceed the cost of closure and post-closure care. ADEQ should allow facilities that store, process, or treat less than 10 tons of waste per month to meet financial assurance by providing financial assurance in the amount of \$10,000.

R18-13-1802. Financial Responsibility Plan.

Subsection A appears to apply to new solid waste facilities. ADEQ should clarify that this is correct.

Subsection C.2 should be limited to releases in excess of reportable quantities listed in A.R.S. § 49-284.

Some solid waste facilities have already provided financial assurance under the APP Program. ADEQ is requiring an update to the APP financial assurance within 180 days. ADEQ should allow the update to occur on the anniversary date of the APP financial assurance mechanism.

Subsection H imposes an affirmative obligation on a facility to provide written notice to ADEQ of insufficient financial responsibility. ADEQ should limit this obligation to an annual review of its financial assurance. If the financial assurance is insufficient, then provide 30 day notice to ADEQ.

ARTICLE 21

R18-13-2103. Solid Waste Facility Plan Review Fees.

In Subsection G, ADEQ proposed an hourly rate of \$73.26 for review of solid waste facility plans. The Solid Waste Statute allows ADEQ only to recover direct costs when reviewing solid waste facility plans. A.R.S. § 49-762.03.E. ADEQ should explain how it calculated the \$73.26 hourly rate based on direct costs.

R18-12-2108. Annual Landfill Registration: Formula for Calculating Annual Registration Fee for an Existing Municipal Solid Waste Landfill; Annual Registration Fee for Non-Municipal Solid Waste Landfills.

Subsection A.2 should be revised to clarify that the total number of pounds of waste considered is limited to "municipal solid waste."

R18-13-2109. Annual Landfill Registration: Due Date and Fees.

It is helpful for ADEQ to provide an invoice for its fees. Thus, ADEQ should provide an invoice under Subsection A.1.

The Chamber has had eight meetings with its members to collect these comments. Many of its members are still considering the impact of the draft rules on its solid waste management activities. Thus, the Chamber may supplement these comments with additional comments.

The Chamber appreciates ADEQ's consideration of these comments and looks forward to working with ADEQ to address the concerns and issues raised by the comments.

Sincerely,



David L. Wallis

Chair, Solid and Hazardous Waste Committee